UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,347	11/09/1999	CHRISTINE A. WHITE	27693-01201	6491

47553 7590 07/17/2007

SIDLEY AUSTIN LLP
ATTN: DC PATENT DOCKETING
1501 K STREET, NW
WASHINGTON, DC 20005

EXAMINER	
HARRIS, ALANA M	

ART UNIT	PAPER NUMBER
1643	

MAIL DATE	DELIVERY MODE
07/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/436,347	WHITE ET AL.	
	Examiner	Art Unit	
	Alana M. Harris, Ph.D.	1643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 April 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *29-98* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *29-98* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *06/27/2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment and Arguments

1. Claims 29-98 are pending.

Claims 29, 41, 55, 60, 67, 84, 85, 92 and 94 have amended.

Claims 95-98 have been added.

Claims 29-98 are examined on the merits.

Withdrawn Grounds of Objection

Claim Objections

2. The objection of claims 41, 67 and 89 due to the following informalities: they recite different spellings, fludarabine and fludaribine is withdrawn in light of Applicants' amendments to the claims.

The objection of claim 92 due to the following informality: "toremifine" should be spelled "toremifene" is withdrawn in light of Applicants' amendments to the claims.

Withdrawn Grounds of Rejection

Claim Rejections - 35 USC § 112

3. The rejection of claims 29-94 under 35 U.S.C. 112, first paragraph, **NEW MATTER REJECTION** as failing to comply with the written description requirement is withdrawn in light of Applicants' amendment to claims 29, 34, 55 and 94.

Withdrawn Grounds of Rejection

Claim Rejections - 35 USC § 102

4. The rejection of claims 29-32, 42, 44, 46, 53-58, 68, 70-72, 79-88, 90 and 91 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent number 6,090,365 (filed November 18, 1997) is withdrawn in light of Applicants' amendments and arguments.

Claim Rejections - 35 USC § 103

5. The rejection of claims 29-94 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 6,090,365 (filed November 18, 1997), and further in view of McLaughlin et al. (Journal of Clinical Oncology 16(8): 2825-2833, August 1998/ IDS reference B1, submitted October 19, 2004), Stenbygaard et al. (Breast Cancer Research and Treatment 25: 57-63, 1993) and U.S. Patent number 6,399,649 B1 (effective filing date September 24, 1998) is withdrawn in light of Applicants' amendments and arguments.

New Grounds of Rejections

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claim 98 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **THIS IS A NEW MATTER REJECTION.**

Applicants have added new claim 98 to include the recitation "...*administering a therapeutic anti-CD20 antibody... to treat the chronic lymphocytic leukemia, wherein the anti-CD20 antibody therapy is combined with chemotherapy, and wherein radiation is not used in conjunction with the therapeutic anti-CD20 antibody*." Applicants assert support for the new claim including this recitation is found in the language of claim 55, as well as paragraphs 0050, 0140, 0260, 0280 and the examples. The Examiner has reviewed claim 55 and the paragraphs noted above and does not concur with Applicants' assertion. Specifically, claim 55, as well as the denoted passages of the specification state a method of treating chronic lymphocytic leukemia (CLL) administering an anti-CD20 antibody either alone or in conjugation with a second radiolabeled anti-CD20 antibody or a chemotherapeutic agent, radiotherapy or lymphokines or cytokine administration. These passages are not sufficient to provide support to Applicants' claim reading on treating CLL with an anti-CD20 antibody combined with one additional therapy devoid of another therapy. The negative limitation, wherein radiation is not used in conjunction with the administration of anti-CD20 combined with chemotherapy, in particular is not supported by the specification.

Applicants should delete the new matter or explicitly point out by page and section number where support may be found for this new limitation.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 29, 39-44, 46-50, 55, 65-70, 72-76, 81-89 and 94-98 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication number

2003/0026804 A1 (effective filing date August 11, 1998). The publication discloses methods for treatment of CLL with Rituximab (Rituxan®) with a first dose at 375mg/m^2, then after dosages range between 500-1500mg/m^2 and at times at an increased dose level, see page 6, sections 0065 and 0065. The increased dose level is regarded by the Examiner as an equivalent to a stepped-up dosing. Patients were refractory to fludarabine, see page 7, sections 0070-0072. The disclosed method can also include a chemotherapeutic regimen comprising the specific agents listed in claims 82-89 see page 2, section 0017; page 6, section 0069; and page 7, sections 0070, 0078 and 0080.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 29-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication number 2003/0026804 A1 (effective filing date August 11, 1998), and further in view of U.S. Patent number 6,090,365 (filed November 18, 1997), McLaughlin et al. (Journal of Clinical Oncology 16(8): 2825-2833, August 1998/ IDS reference B1, submitted October 19, 2004) and Stenbygaard et al. (Breast Cancer Research and Treatment 25: 57-63, 1993). The teachings of the publication have been presented in the 102(e) rejection. The patent application publication does not teach a method of treating CLL wherein the anti-CD20 antibody is administered in

the recited dosages and at the specified time points of claims 30-32 and 56-58 and claims 51-54 and 77-80, as well as the chemotherapy comprises methotrexate, cisplatin, toremifene or tamoxifen.

However, U.S. Patent 6,090,365 (filed November 18, 1997) teaches the administration of a CD20 antibody intravenously to a patient in the range from 0.2 to 40 mg/kg, which reads on Applicants' range, see column 10, lines 62-64; and column 29, lines 47-56. The patent also teaches the use of methotrexate and cisplatin, see column 17, Table 1; and column 35, lines 12-20.

McLaughlin teaches a method of treating patients with several types of lymphoma with the administration of a chimeric anti-CD20 monoclonal antibody, rituximab (IDEC-C2B8), see title and Patients and Methods section on page 2826, column 1. All of the patients were given an antibody dose of 375mg/m^2 intravenously once weekly for a total of four infusions, see abstract and page 2826, column 1, Therapy section. Patients had to have either not responded to primary therapy or relapsed in order to participate in the study, see page 2826, 1st column, Eligibility section. "The initial infusion rate was 50mg/h, with subsequent infusion rate increase...", see cited Therapy section. Stenbygaard teaches the implementation of chemotherapeutic agents, toremifene and tamoxifen in the treatment of cancer.

Additionally, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the claimed invention was made to administer the anti-CD20 antibody in the recited dosages. One of ordinary skill in the art would have been motivated to do so with a reasonable expectation of success by teachings well known in the art, that

dosages of any pharmaceutical composition must be adjusted and optimized.

It would have been *prima facie* to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of the publication McLaughlin and the patent to efficaciously treat cancer. One of ordinary skill in the art would have been motivated to combine the teachings of all the documents because McLaughlin cites there has been "...evidence of synergism between [rituxumab] and some chemotherapeutic agents" to implement targeted immunotherapy and consequently specifically destroy cells associated with a pathogenic condition (i.e. leukemias and lymphomas), see McLaughlin page 2831, column 2, last paragraph; and entire Stenbygaard article.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alana M. Harris, Ph.D. whose telephone number is (571)272-0831. The Examiner works a flexible schedule, however she can normally be reached between the hours of 7:30 am to 6:30 pm, with alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry R. Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALANA M. HARRIS, PH.D.
PRIMARY EXAMINER

Alana M. Harris, Ph.D.
09 July 2007